IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7982 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAKASH @ SONU BHOJUMAL TAHELRAMANI (SINDHI)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7982 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 14/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the Police Commissioner, Ahmedabad city on 20.11.2002 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds served upon the petitioner and placed on record denote that the detaining authority took into consideration registration of two offences against the petitioner on 10.11.2002 and 16.8.2002 under sec. 66(1)(B), 65(A)(E), 116(1)(B), 81 and 83 of the Bombay Prohibition Act. In one case, foreign liquor worth Rs. 39,000/- and in other case foreign liquor of Rs. 56,400/ came to be seized by the police from the petitioner. The detaining authority also took into consideration two in-camera statements as recorded by the sponsoring authority on 16.11.2002 as verified by the detaining authority on 18.11.2002. Both the statements revealed the incidents occurred on 30.10.2002 and 3.11.2002. From the above material, the order impugned came to be passed.

Ld. advocate Mr MR Prajapati for the petitioner and ld. AGP Mr. RM Chauhan for the respondents were heard at length. The affidavit in reply filed by the detaining authority as placed on record is also taken into consideration.

Out of various grounds urged on behalf of the petitioner and controverted by ld. AGP, from the rival contentions, it appears that the matter can be disposed of on the ground whether the subjective satisfaction of the detaining authority as to the objectional activities of the petitioner being prejudicial to the public order is based on material placed before him. So far as the registration of two offence under the Bombay Prohibition Act is concerned, those cases can hardly be said to be the activities prejudicial to the maintenance of the public order. Those cases are still pending in the court and at the most the allegation is from the petitioner foreign liquor was found and seized by the police. This is not the material to reach to the subjective satisfaction that by registration of crimes ipso facto the public order is disturbed. So far as other material is concerned, the detaining authority took into consideration two in-camera statements as aforesaid. While going through those statements it is clearly appears that those are the individual disputes picked up by petitioner with the witnesses instead of objectional activities prejudicial to the public order. Incident of 30.10.2002 as revealed in the statement pertains to occurrence of a dispute between the witness and

petitioner and his associates because as per the statement on suspicion that witness was informing the police about the illegal activity of the petitioner, the witness was beaten by the petitioner and his associates, the crowd was gathered but due to the threat given by the petitioner, the crowd was disbursed. Likewise, the incident which occurred on 3.11.2002, pertains to the disputes for the same cause, the witness was informing the police about the illegal activity of the petitioner. The witness was beaten and crowd was gathered but on account of the fear of the petitioner and his associates, the crowd was disbursed. At the most if these materials are taken on its face value, it could be said that the objectional activities of the petitioner is a breach of law and order and not disturbance of public order. The distinction between the breach of law and order and disturbance of public order is one of degree and extent of reach of the activities in question upon the society. The objectional activities of a detenu have to be judged in the totality of the circumstances to find out whether those activities have any prejudicial effect on the society as a whole or not. Whether the activities adversely affects the even tempo of society by creating a feeling of insecurity amongst those who were likely to depose against the petitioner. The extent and each of the objectional activities in totality of circumstances from the material placed before the detaining authority only indicates the problems of the breach of law and order even if the whole material is taken to be on its face value. Therefore, the order impugned in this petition is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 20.11.2002 by the Police Commissioner, Ahmedabad city, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS Permitted.

(J.R. VORA, J.)

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